

1 **VILLAGE OF ESTERO, FLORIDA**

2
3 **ORDINANCE NO. 2016 - 14**

4
5 **AN ORDINANCE OF THE VILLAGE COUNCIL OF THE**
6 **VILLAGE OF ESTERO, FLORIDA, ESTABLISHING A**
7 **TEMPORARY MORATORIUM ON CANNABIS**
8 **DISPENSING BUSINESSES AS FURTHER DEFINED**
9 **HEREIN; PROVIDING FOR GEOGRAPHIC AREA**
10 **COVERED; PROVIDING FOR PENALTIES;**
11 **PROVIDING A SAVINGS CLAUSE, A GENERAL**
12 **REPEALER CLAUSE, AND AN EFFECTIVE DATE.**

13
14 **WHEREAS**, in 2014 the Florida Legislature enacted a law legalizing low-THC
15 medical cannabis in Florida; and

16
17 **WHEREAS**, in 2016 the Florida Legislature expanded the law to legalize medical
18 cannabis in Florida; and

19
20 **WHEREAS**, future constitutional amendments and legislation may further expand the
21 legal use of cannabis in Florida; and

22
23 **WHEREAS**, a comprehensive State licensing and regulatory framework for the
24 cultivation, processing, and dispensing of cannabis now exists; and

25
26 **WHEREAS**, the comprehensive State licensing and regulatory framework directs that
27 the criteria for the number and location of, and other permitting requirements that do not
28 conflict with state law or department rule for, dispensing facilities of cannabis businesses may
29 be determined by local ordinance; and

30
31 **WHEREAS**, cannabis businesses licensed pursuant to the law have begun cultivating
32 cannabis for processing and dispensing; and

33
34 **WHEREAS**, the dispensing of cannabis is currently illegal under federal law and the
35 United States Drug Enforcement Agency has recently confirmed that cannabis remains a
36 Schedule I drug under federal law, but the United States Department of Justice has discussed
37 federal enforcement of such laws with respect to state regulated cannabis operations in the
38 2012 "Cole Memorandum;" and

39
40 **WHEREAS**, potential adverse impacts on the health, safety, and welfare of residents
41 and business from secondary effects associated with the distribution of cannabis exist,
42 potentially including, offensive odors, trespassing, theft, fire hazards, increased crime in and
43 about the dispensary, robberies, negative impacts on nearby businesses, nuisance problems,
44 and increased DUI incidents; and

46 **WHEREAS**, certain of the above potential adverse impacts are accentuated by the
47 current difficulties experienced by cannabis businesses in obtaining banking services
48 necessitating such businesses to operate on a cash basis; and
49

50 **WHEREAS**, there exists the potential for misappropriation of medical cannabis to
51 non-medical uses; and
52

53 **WHEREAS**, an overabundance of dispensing facilities can affect the viability of such
54 facilities, result in compliance issues, lead to the improper diversion of products, and
55 accentuate threats to the public health, safety, and welfare; and
56

57 **WHEREAS**, in November of this year, Florida voters will decide whether to amend
58 the Florida Constitution to legalize the cultivation, production, and dispensing of medical
59 cannabis for a broader population of eligible patients; and
60

61 **WHEREAS**, Florida laws relating to the cultivation, production, and dispensing of
62 cannabis products are rapidly changing – raising substantial questions about whether cannabis-
63 related land uses, as a category of commercial use, may have deleterious and negative
64 secondary effects on surrounding land uses and communities; and
65

66 **WHEREAS**, the purpose of this ordinance is to place a temporary moratorium on the
67 opening of certain new cannabis dispensing facilities, and on the expansion or relocation of
68 certain existing cannabis dispensing facilities; and
69

70 **WHEREAS**, the Village hereby finds that the temporary moratorium imposed by this
71 ordinance is intended to give the Village the time reasonably necessary to investigate the
72 impacts of cannabis dispensing facilities, and if necessary, to promulgate reasonable
73 regulations relating to such establishments; and
74

75 **WHEREAS**, the Village hereby finds that this ordinance advances an important
76 government purpose by reducing the likelihood of the unregulated negative secondary effects
77 of cannabis dispensing facilities; and
78

79 **WHEREAS**, the Village hereby finds that this ordinance is in the best interest of the
80 public health, safety, and welfare; and
81

82 **WHEREAS**, the Village has determined it is in the public interest to adopt this
83 Ordinance pursuant to the Village police powers to protect the health, safety, and welfare of
84 the public.
85

86 **NOW, THEREFORE**, be it ordained by the Village Council of the Village of Estero,
87 Florida:
88
89
90

91 **Section 1. Purpose and Intent.**

92
93 The purpose of this Ordinance is to provide the Village with the opportunity to review
94 the impact of recent changes in law and the potential passage of a constitutional
95 amendment, as well as the impact of cannabis dispensing in other jurisdictions, to
96 determine how such dispensing should be permitted or regulated in the Village.
97

98 **Section 2. Definitions.**

99
100 (1) The following words and phrases, when used in this Ordinance, shall have the
101 meanings ascribed to them in this Ordinance:
102

- 103 a. **Cannabis** means all parts of any plant of the genus Cannabis, whether
104 growing or not; the seeds thereof; the resin extracted from any part of the
105 plant; and every compound, manufacture, salt, derivative, mixture, or
106 preparation of the plant or its seeds or resin.
107
108 b. **Cannabis dispensing business** or **business** shall mean a business location
109 offering cannabis for retail sale pursuant to a license to dispense cannabis
110 issued under applicable law.
111
112 c. **Compassionate Use Act** shall mean section 381.986, Florida Statutes, and
113 chapter 2016-123, Laws of Florida, as amended from time to time, and
114 any rules or regulations promulgated thereunder.
115
116 d. **State** shall mean the State of Florida.
117

118 (2) In addition to the definitions contained in Subsection (1), other terms used in
119 this Ordinance shall have the meaning ascribed to them in the Compassionate Use Act,
120 and such definitions are incorporated into this Ordinance by this reference.
121

122 **Section 3. Temporary Moratorium.**

123
124 Beginning on the effective date of this Ordinance, for a period of twelve (12) months
125 from the effective date, a moratorium is hereby imposed on the opening of new
126 cannabis dispensing businesses and on the expansion or relocation of existing cannabis
127 dispensing businesses in the Village.
128

- 129 a. During the moratorium, it is unlawful and a violation of this ordinance for
130 any person or entity to open or cause to be opened any cannabis
131 dispensing business within the Village.
132
133 b. During the moratorium, it is unlawful and a violation of this ordinance for
134 any person or entity to relocate or cause to be relocated any cannabis
135 dispensing business within the Village.

- 136 c. During the moratorium, it is unlawful and a violation of this ordinance for
137 any person or entity to expand or cause to be expanded any cannabis
138 dispensing business within the Village.
139
140 d. During the moratorium, the Village shall not accept, process or approve
141 any application for business tax receipts, licenses, building permits, land
142 use permits, or any development permits concerning or related to a
143 cannabis dispensing business.
144
145 e. During the moratorium, the Village shall not accept, process or approve
146 any business tax receipts, building permits, land use permits, or any
147 development permits concerning or related to a cannabis dispensing
148 business.
149
150 f. During the moratorium, the Village shall not accept, process or approve
151 any licenses, permits, or approvals for any property, entity, or individual
152 for the sale or dispensation of cannabis so long as this ordinance is in
153 effect.
154

155 Nothing in this temporary moratorium shall be construed to prohibit the use of cannabis
156 pursuant to the Compassionate Use Act or other applicable Florida Law, or the delivery
157 of cannabis in compliance with the Compassionate Use Act or other applicable Florida
158 Law.
159

160 **Section 4. Study and Recommendations.**
161

162 The Village Manager is hereby directed to study land development regulations for
163 cannabis dispensaries and the impact of such regulations in other jurisdictions.
164

165 **Section 5. Penalties.**
166

167 Any person or entity who violates any provision of this Ordinance or who fails to
168 comply therewith, or with any of the requirements thereof, shall be fined in an amount
169 not exceeding five hundred dollars (\$500.00) per violation, per day, or be imprisoned
170 for a period of time not to exceed sixty (60) days.
171

172 **Section 6. Severability.**
173

174 If any provision of this ordinance or its application to any person or circumstance is
175 held invalid, the invalidity does not affect other provisions or applications of this
176 ordinance which can be given effect without the invalid provision or application, and
177 to this end the provisions of this ordinance are severable.
178
179
180

Section 7. Repeal.

All ordinances, resolutions, official determinations or parts thereof previously adopted or entered by the Village or any of its officials and in conflict with this ordinance are hereby repealed to the extent inconsistent herewith.

Section 8. Effective Date.

This ordinance shall take effect immediately upon adoption, and shall remain in effect for a period of twelve (12) months from that date.

PASSED on first reading this _____ day of _____, 2016.

PASSED AND ADOPTED BY THE VILLAGE COUNCIL of the Village of Estero, Florida this _____ day of _____, 2016.

Attest:

VILLAGE OF ESTERO, FLORIDA

By: _____
Kathy Hall, MMC, Village Clerk

By: _____
Nicholas Batos, Mayor

Reviewed for legal sufficiency:

By: _____
Burt Saunders, Esq., Village Attorney

Vote:	AYE	NAY
Mayor Batos	_____	_____
Vice Mayor Levitan	_____	_____
Councilmember Boesch	_____	_____
Councilmember Brown	_____	_____
Councilmember Errington	_____	_____
Councilmember Ribble	_____	_____
Councilmember Wilson	_____	_____